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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,277	09/03/2004	Christopher Brett Ward	4046-022	5676
23440 7590 04/14/2009 GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 10016-0601				
EXAMINER				
PHASGE, ARUN S				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
04/14/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/501,277

Applicant(s)

WARD, CHRISTOPHER BRETT

Examiner

Arun S. Phasge

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CD/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 20-54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kasaaiian in view of Leonard of record for reasons of record.

Response to Arguments

Applicant's arguments filed 1/23/09 have been fully considered but they are not persuasive.

Applicants argue that "With all of the foregoing background information and explanatory disclosure, it is difficult to imagine that Kasaaiian would later contradict himself in the same document. Yet in the Office Action, the Examiner relies on Kasaaiian's Example 1 (in columns 4 and 5) for the proposition that he discloses a leach process that uses "sulfuric acid with sulfur dioxide bubbled through the tank," from which the Examiner infers that both the sulphur dioxide AND the sulphuric acid are somehow involved in the leaching reaction itself, or that both function as the leaching

.agents. This is a misapprehension of Kasaaian's teaching, and it exalts form over substance to insist that in Example 1, Kasaaian is disclosing a *different* function for the sulphur dioxide than that which he discloses over and over again elsewhere, in the more general, prefatory portions of his patent."

The Kasaaian patent discloses the same steps of treating a manganese containing material with an acidic leach solution and passing a volume of sulphur dioxide through the solution to leach the ore (see example 1). The sulfur dioxide is added to the leach solution and forms a leach solution with the sulfuric acid (see col. 3, lines 30-40).

In response to applicant's argument that Kasaaian would use the sulfur dioxide for a different reason, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants further argue the Kasaaian's process includes further steps that are required to accomplish the desired result, whereas the present invention does not require such steps. The claim language of the instant claims is written in open language and do not exclude further steps.

Applicants further argue that the sulfuric acid is merely present in the solution to lower the pH to 1.5 or below and other acids can be used. This disclosure is matched by the disclosure of Kasaian, which teaches the use of the sulfuric acid to lower the pH of the solution to around 1.5 and other acids can theoretically be used (see col. 3, lines 17-24). This lower pH would inherently minimize the formation of dithionate ions as noted on page 7, lines 13-19 of the specification.

With respect to the Leonard patent, applicants argue that the patent is only talking about the starting material and even though the patent teaches that these are operating variables.

References are valid for what they convey, explicitly or implicitly, to one skilled in art; that experimentation may not have appeared promising is of no importance; reference may be valid even though it states that its disclosure is not practical. *In re Aller et al*, 105 U.S.P.Q.233 C.C.P.A. (1955).

Consequently, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Kasaian by the teachings of Leonard.

One having ordinary skill in the art would have been motivated to do this modification, because Leonard discloses that the values of the dithionate present during operation of a manganese leaching process should be maintained or adjusted within the claimed range (col. 4, lines 33-50).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Phasge whose telephone number is (571) 272-1345. The examiner can normally be reached on **MONDAY-THURSDAY, 7:30-6:00**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arun S. Phasge/
Primary Examiner, Art Unit 1795

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